

Message Text

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FOR: SCS AND L/SCS

E.O. 11652: N/A
TAGS: CASC, MX
SUBJ: W/W: ARRESTS: REPORT TO CONGRESS UNDER PL-94-329

REF: STATE 294015

1. FOR GUIDANCE OF EMBASSY AND CONSTITUENT POSTS IN
PREPARING RESPONSE TO REFTEL, REQUEST CLARIFICATION ON
FOLLOWING POINTS (LETTERED PARAGRAPHS CORRESPOND TO
SUBPARAS OF PARA 3 REFTEL.)

C. VISITATION: REFTEL REQUESTS FREQUENCY OF VISITS TO EACH
PRISONER WITHIN POST'S JURISDICTION. ACCURATE RESPONSE
WOULD REQUIRE LISTING EVERY PRISONER'S NAME, WITH DATES
HE WAS VISITED, AND COMMENTS ON DATES PRISONER DECLINED
VISIT OR WAS OTHERWISE UNAVAILABLE TO CONSULAR OFFICER.
WE SUGGEST INSTEAD THAT EACH POST LIST FREQUENCY OF VISITS
TO EACH PRISON, DESCRIBE EFFORTS MADE TO SEE EACH PRISONER
ON A REGULAR BASIS, AND MENTION ANY PROBLEMS OR EXCEPTIONS
TO POLICY OF MONTHLY VISITS.

D. ALLEGATIONS OF INNOCENCE: (1) REFTEL IS NOT CLEAR
ON WHAT BASIS POSTS ARE TO REPORT CASES INVOLVING
ALLEGATIONS OF INNOCENCE. WE ASSUME THAT THE BASIS REMAINS
THE SAME AS IN THE PRISONER CASE REVIEW CONDUCTED LAST
YEAR - I.E. A CASE IN WHICH EITHER THE PRISONER OR HIS
FAMILY ALLEGES TO THE CONSULAR OFFICER, TO A MEMBER OF
CONGRESS, OR OTHER PARTY, THAT THE PRISONER IS INNOCENT
OF ANY OFFENSE AGAINST MEXICAN LAW, REGARDLESS OF HOW THE
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PRISONER PLEADS BEFORE THE COURT. (2) AND (3)

SUBSTANTIATED AND UNSUBSTANTIATED ALLEGATIONS OF INNOCENCE: ON THE BASIS OF EXPERIENCE ACQUIRED OVER THE PAST YEAR, THE EMBASSY BELIEVES IT SHOULD NOT BE PUT IN THE POSITION OF DECIDING WHICH ALLEGATIONS OF INNOCENCE CAN BE SUSTAINED AND WHICH CANNOT. IN THE EXPERIENCE OF THE EMBASSY LEGAL ADVISER, NO ALLEGATION OF INNOCENCE CAN BE REASONABLE WEIGHED WITHOUT IN-DEPTH INTERVIEWS WITH THE PRISONER AND A CAREFUL REVIEW OF HIS FULL COURT RECORD (EXPEDIENTE), BOTH CONDUCTED BY A QUALIFIED LAWYER. WITH ONLY ONE SUCH LAWYER (THE LEGAL ADVISER), WHOSE TIME HAS BEEN OCCUPIED ON GENERAL ISSUES, SUCH AS THE NEGOTIATION OF THE EXECUTION OF SANCTIONS TREATY, DEVELOPING INFORMATION ON THE MEXICAN LEGAL SYSTEM AND THE PROBLEM OF THE LAWYERS, THE EMBASSY AND CONSTITUENT POSTS HAVE NOT BEEN ABLE TO PROVIDE A SUFFICIENTLY CAREFUL REVIEW OF INDIVIDUAL CASES TO PROVIDE A BASIS FOR DETERMINING GUILT OR INNOCENCE. MOREOVER, IT WAS THE UNDERSTANDING OF THE EMBASSY LEGAL ADVISER THAT THE ROLE OF DETERMINING GUILT OR INNOCENCE WOULD NOT BE IMPOSED UPON HIM OR UPON CONSULAR OFFICERS.

3. ABUSE AT TIME OF ARREST: AS CRITERIA FOR DETERMINING CASES IN WHICH ALLEGATION OF ABUSE APPEARS SUBSTANTIATED, WE SUGGEST THE FOLLOWING: (A) THERE WAS PHYSICAL EVIDENCE OF ABUSE SEEN BY CONSULAR OFFICER OR ATTESTED TO BY MEDICAL CERTIFICATE OR (B) WHERE THERE WAS NO PHYSICAL EVIDENCE OF ABUSE, THE CIRCUMSTANCES OF THE CASE AND PAST EXPERIENCE SATISFIED THE CONSULAR OFFICER THAT THE ALLEGED ABUSE PROBABLY DID TAKE PLACE. WE SUGGEST THAT THE TOTAL CASES OF ACTUAL PHYSICAL ABUSE BE REPORTED SEPARATELY FROM THE CASE INVOLVING ONLY THREATS OF ABUSE, AS THE LATTER CATEGORY WOULD INCLUDE A VERY HIGH PERCENTAGE OF CASES. WHILE BOTH ACTUAL ABUSE AND THREATS OF ABUSE CONSTITUTE SERIOUS VIOLATIONS OF THE RIGHTS OF THE PRISONER, THE USE OF THREATS IN SOME FORM IS NEARLY UNIVERSAL IN MEXICAN POLICE PRACTICE, YET ALMOST IMPOSSIBLE TO PROVE. UP TO THE PRESENT, THE EMBASSY HAS NOT PROTESTED BEYOND THE LOCAL LEVEL CASES INVOLVING THREATS ONLY.

F. PROBLEM OF ILLEGAL SEIZURE AND RETENTION: WHEN A PERSON IS ARRESTED, MOST OF HIS BELONGINGS ARE LEGALLY UNCLASSIFIED

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IMPOUNDED BY THE POLICE AND PLACED IN THE CUSTODY OF THE COURT. THE EMBASSY AND CONSTITUENT POSTS ARE IN A CONTINUING PROCESS OF OBTAINING FROM THE COURTS THOSE BELONGINGS WHICH THE PRISONERS ARE PERMITTED TO HAVE WITH THEM IN PRISON. MANY ITEMS CANNOT BE CLAIMED UNTIL THE PRISONER IS SENTENCED OR RELEASED, AND IT IS DIFFICULT OR IMPOSSIBLE TO DETERMINE WHICH ITEMS HAVE ACTUALLY BEEN CONFISCATED OR STOLEN UNTIL ALL POSSESSIONS ARE RETURNED BY

THE COURT UPON RELEASE OF THE PRISONER. IN SOME CASES PRISONERS HAVE CLAIMED CASH OR OTHER VALUABLES WERE SEIZED AT THE TIME OF ARREST WHICH ARE NOT LISTED IN THE COURT RECORD OF HIS POSSESSIONS IN CUSTODY. WE SUGGEST THAT CASES REPORTED UNDER THIS ITEM INCLUDE ONLY THOSE CASES IN WHICH THERE IS A PRESUMPTION THAT THE POSSESSIONS ARE MISSING OR WILL NOT BE RETURNED BY THE COURT. THE ITEM SHOULD ALSO EXPLAIN THAT THERE MAY BE OTHER CASES IN WHICH THE PRISONERS WILL NOT RECEIVE ALL THE POSSESSIONS SUPPOSEDLY HELD IN THE CUSTODY OF THE COURT.

G. EXTORTION BY ATTORNEYS: UNDER THIS ITEM, WE PROPOSE REPORTING ONLY THOSE CASES IN WHICH THE PRISONERS HAS COMPLAINED OF EXTORTION OR INADEQUATE PERFORMANCE BY HIS ATTORNEY. WE HAVE REASON TO BELIEVE THAT THE MAJORITY OF CASES, EVEN BY MINIMAL U.S. STANDARDS, INVOLVED INADEQUATE SERVICE BY ATTORNEYS.

I. PROLONGED DETENTION WITHOUT JUDGEMENT: (2) AND (3) WE DO NOT HAVE ANY OBJECTIVE MEANS OF DETERMINING THE REASON FOR DELAY IN SENTENCING IN ANY GIVEN CASE. IN SOME CASES, THE DELAY MAY BE CAUSED BY TACTICS OF THE DEFENSE ATTORNEY OF WHICH THE PRISONER MAY OR MAY NOT BE AWARE. (4) NO EFFECTIVE REMEDIAL ACTION HAS BEEN FOUND TO THE PROBLEM OF PROLONGED DETENTION. DIPLOMATIC PROTEST NOTES HAVE PRODUCED NO RESPONSE. DIRECT APPROACHES TO THE JUDGES IN PERSON OR BY LETTER HAVE APPEARED TO EXPEDITE JUDGEMENT, BUT AT THE COST OF WHAT APPEARS TO BE A STIFFER SENTENCE FOR THE PRISONER.
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